

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN RE THE MATTER OF: J.D.S.
N/K/A J.G.S.;**

MICKIE AND MICHAEL SMITH,

APPELLANTS,

**v.
AMY DUESENBERG**

RESPONDENT.

DOCKET NUMBER WD78318 Consolidated with WD78492

DATE: January 26, 2016

Appeal From:

Platte County Circuit Court
The Honorable Wanda A. Hansbrough, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Attorneys:

Jason C. Conkright, Kansas City, MO, for appellants.

William M. Quitmeier, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Platte County

Before Division Three: Joseph M. Ellis, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Appellants Mickie and Michael Smith (the "Smiths"), are maternal grandparents of a minor child, J.S. Respondent, Amy Duesenberg ("Duesenberg"), is the paternal grandmother of J.S. Both the Smiths and Duesenberg sought to adopt J.S. after the parental rights of her natural parents were terminated in a separate proceeding. Ultimately, Duesenberg dismissed her adoption petition, the Smiths were granted adoption of J.S., and Duesenberg filed a Petition for Grandparents Visitation ("Petition"). The Circuit Court of Platte County, Missouri, granted Duesenberg visitation time with J.S. The Smiths again moved to set aside the judgment because Duesenberg lacked standing. The circuit court denied the motion and the Smiths appeal.

WE REMAND

(1) The trial court erred in finding that Duesenberg had standing to seek visitation because Duesenberg had no statutory right to seek visitation. Duesenberg filed her Petition seeking visitation pursuant to Sections 452.402, 452.375.5, and 211.177. Parties agreed that Section 452.402 was inapplicable. Section 211.177 only applies to "proceedings initiated pursuant to" Chapter 211 and was thus inapplicable to the adoption proceeding. Finally, Section 452.375.5 was inapplicable because there was not an ongoing custody hearing as contemplated by Chapter 452.

(2) The trial court could not grant standing to Duesenberg by judicial estoppel because to do so would create a new avenue for a court to obtain jurisdiction and allow a court to rule in a proceeding without any currently recognized constitutional authority to do so.

Opinion by Gary D. Witt, Judge

January 26, 2016

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